

DECISION



19511 *Boyle*
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-204045

DATE: September 23, 1981

MATTER OF: United Computing Systems, Inc.

DIGEST:

1. Prior to establishment of competitive range, agency's request for information from protester, which went to acceptability of proposal, constituted discussions. Agency acted properly in not permitting a best and final offer from protester because agency's evaluation of protester's modified proposal showed that protester's proposal was not in the competitive range.
2. Agency properly excluded second ranked proposal from competitive range because significant technical and cost disparity between first and second ranked proposals made it unlikely that second ranked proposal could have been sufficiently improved through further discussions to become competitive.

United Computing Systems, Inc. (UCS), protests the determination of the Department of Agriculture, Forest Service (Agriculture), to exclude UCS's proposal from the competitive range in connection with request for proposals (RFP) No. RFP-PSW-81-1 for certain teleprocessing services. UCS contends that Agriculture conducted discussions with UCS but did not permit UCS to submit a best and final offer before eliminating UCS from the competition. UCS argues that Agriculture's determination established a competitive range of one, the awardee, Information Systems Design, a division of Control Data Corporation (ISD). We find that UCS's protest is without merit.

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UCS states that, after reviewing its initial proposal, Agriculture advised UCS that UCS's restrictions on Agriculture's use of UCS's cost formula did not meet the RFP's requirements. Agriculture asked UCS if UCS was willing to change the restrictions. UCS responded by changing the restriction in a manner considered acceptable to Agriculture. UCS characterizes this event as discussions and UCS concludes that Agriculture eliminated UCS from the competitive range without discussing other aspects of UCS's proposal and without asking for UCS's best and final offer.

It appears that Agriculture's preliminary inspection of UCS's initial proposal revealed that UCS had not satisfied one of the RFP's mandatory requirements; thus, complete evaluation of UCS's proposal would have been unnecessary unless UCS modified its proposal to meet the mandatory requirement. Agriculture's notice to UCS of the fatal defect was UCS's opportunity to correct it and remain in the competition.

We note that, at the time Agriculture contacted UCS for the information necessary to permit UCS to be evaluated, the proposals had not been evaluated and no competitive range had been established. We conclude that, based on the information given by UCS, the contact constituted discussions because the information went to the acceptability of UCS's proposal. See CompuServe Data Systems, Inc., B-195982.2, May 14, 1981, 81-1 CPD 374. However, we do not find that this contact gave UCS the right to submit a revised proposal, regardless of a subsequent competitive range determination. Even where the competitive range has been established prior to discussions, we have held that where it is clear the proposal should not continue to remain in the competitive range, following discussions, it is permissible to drop the proposal without allowing the submission of a revised proposal. Operations Research Inc., 53 Comp. Gen. 860 (1974), 74-1 CPD 252. Accordingly, since Agriculture determined that UCS's modified proposal was not in the competitive range, the contracting agency acted properly in not permitting a best and final offer from UCS.

After completing the evaluation of the technical and cost aspects of UCS's proposal and the other two proposals received, the results were as follows:

	<u>Maximum points</u>	<u>ISD</u>	<u>UCS</u>	<u>Vendor C</u>
Technical	40	40	33.4	27.2
Cost	<u>60</u>	<u>60</u>	<u>34.0</u>	<u>24.0</u>
Total	100	100	67.4	51.9

The net present value of ISD's proposal was \$358,167.45; UCS's net present value was \$632,861.95; and vendor C's was \$869,904.05.

Agriculture determined that UCS and vendor C should be eliminated from the competitive range. UCS was eliminated because, in Agriculture's view, UCS was offering lower quality services at about twice the cost of ISD and UCS's evaluated cost was so out of line with ISD's evaluated cost that meaningful discussions were precluded.

UCS contends that Agriculture's establishment of a competitive range of one should be closely reviewed by our Office. UCS notes that, although substantial price differences have been determined to be a reasonable basis to exclude a proposal from the competitive range, price swings in teleprocessing service procurements can vary substantially, implying that UCS may have reduced its cost in its best and final offer.

Our Office very scrupulously reviews agency determinations that result in a competitive range of one since Federal procurement laws and regulations require maximum practical competition. See WASSKA Technical Systems and Research Company, B-189573, August 10, 1979, 79-2 CPD 110. As UCS notes, however, our decisions have held that an agency may properly exclude a technically acceptable proposal from the competitive range when it is unlikely that the initially proposed price would have been lowered sufficiently to

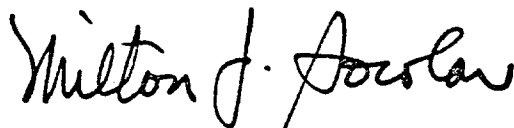
make the proposal reasonably competitive. For example, in RKFM Products Corporation, B-186424, September 15, 1976, 76-2 CPD 247, we upheld the agency's determination to exclude the protester's proposal, which was about twice the price of the low priced proposal, because it was unrealistic to believe that the protester would have lowered its price sufficiently to be competitive. See also, B-166229, October 1, 1969.

Similarly, in Free State Contractors Association, Inc., B-187630, March 10, 1977, 77-1 CPD 180, we upheld an agency determination to exclude the second rated proposal because there was considerable disparity between the overall scores of the first and second rated proposals and it was unlikely that the second rated proposal could have been sufficiently improved except through extensive discussion and revision. See also, Hercules Incorporated, B-180831, October 8, 1974, 74-2 CPD 191.

Here, to be competitive, UCS would have had to reduce its cost by about half and also significantly improve its technical score. UCS has not indicated that it could have improved the technical aspects of its proposal and UCS has only implied that its proposed costs could have been significantly reduced. Further, in view of the RFP's warning that award could be made on an initial proposal basis, UCS assumed certain risk if it did not present its best cost proposal in its initial proposal.

Accordingly, UCS has provided no basis for our Office to question Agriculture's determination to exclude UCS's proposal from the competitive range. Therefore, UCS was not entitled to submit a best and final offer.

Protest denied.



Acting Comptroller General
of the United States